



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF J-D-

DATE: MAR. 29, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a petroleum engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of a job offer and thus of a labor certification would be in the national interest. The matter is now before us on appeal. In January 2017, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*.

In support of her appeal, the Petitioner submits additional documentation and argues that she is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* clarifies that, after EB-2 eligibility as an advanced degree professional or individual of exceptional ability has been established, USCIS may grant a national interest waiver if the petitioner demonstrates by a preponderance of the evidence: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. If these three elements are satisfied, USCIS may approve the national interest waiver as a matter of discretion.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. INTRODUCTION

The Petitioner received a Master of Science degree in petroleum engineering from [REDACTED] in 2009. Accordingly, the Director found that the Petitioner qualified as a member of the professions holding an advanced degree. The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing the petition, the Petitioner was employed as an engineering advisor to the vice president of global drilling and completions operations at [REDACTED]. In an introductory letter, she explained that she works to ensure the integrity of [REDACTED] global drilling and completions operations through "enhancing risk mitigation activities and functional and organizational capabilities to significantly improve performances across all facets in the drilling and completions community to deliver safe, reliable and efficient operations." The Petitioner's job responsibilities included management of projects related to drilling and completion reorganization, risk mitigation for strategic projects, improvement of functional capability for the company's global drilling and completion organization, and ensuring standardization to improve overall drilling efficiency and cost.

## III. ANALYSIS

### A. Substantial Merit and National Importance of the Proposed Endeavor

Our RFE asked the Petitioner to provide updated information and evidence regarding her current employment and her plans for future work in the oil and gas industry. In response, the Petitioner submits a January 2017 letter from [REDACTED] vice president of drilling and completions for [REDACTED] indicating that she "is currently serving as Pore Pressure and Rock Mechanics Subject

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

Matter Expert working in [REDACTED] Thailand office.” Regarding the Petitioner’s plans for future work in the United States, [REDACTED] asserts that her “prospective position in the United States is Engineering Advisor in [REDACTED] Business Unit.” The Petitioner contends that she will “be responsible for improving drilling and completions operations efficiency and enhancing safety standards in the [REDACTED] operations.” She provides [REDACTED] “Drilling and Completions” job description, which states: “A career in drilling and completions offers the opportunity to ensure that [REDACTED] drilling operations and completion techniques are safe, environmentally conscious and cost-efficient. Whether you’re an engineer or a drill site/well site manager, you’ll apply your expert knowledge and skills to help bring the world vital energy.”

We find that the Petitioner’s proposed work as an engineering advisor, which helps ensure the integrity of her company’s drilling and completion operations, has substantial merit. In his letter, [REDACTED] states that “America needs to find more sources of energy” and that the vast resources of the deep oceans should be tapped, but that incidents like the [REDACTED] oil spill must be avoided due to adverse financial and environmental consequences. Furthermore, the record includes published articles and reports focusing on safety issues in oil and gas operations, and letters from professionals at [REDACTED] and other companies attesting to importance of ensuring safe drilling practices while expanding our nation’s energy resource development.

With respect to the national importance of the Petitioner’s proposed endeavor, our RFE asked for evidence documenting the “potential prospective impact” of her proposed endeavor. Specifically, we requested documentation demonstrating that her proposed work has broader implications for the field of petroleum engineering.

The Petitioner argues that her “work goes far beyond just having an impact on [REDACTED] – it has national economic and environmental implications for the oil and gas industry and the nation as a whole.” She states that her prior work as engineering advisor to the vice president of Global Drilling and Completions “was not limited to [REDACTED] local Texas office’s [*sic*], but extended to the company’s national and international offices as well.” She asserts that her engineering work with the [REDACTED] business unit will similarly “be national in scope and not tied only to the Texas company office.” We note, however, that the Petitioner has not offered sufficient evidence to demonstrate that her prospective role as engineering advisor in [REDACTED] business unit has a commensurate level of impact on the company’s national or international operations as her previous position. More importantly, she has not established that her proposed work has implications beyond her company and its business partners at a level sufficient to demonstrate the national importance of her endeavor.<sup>3</sup>

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<sup>3</sup> In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. While the Petitioner emphasizes the large scale of [REDACTED] drilling operations and refining capacity, she has not demonstrated that an impact on this single company and its projects necessarily equates to a broader impact on the oil and gas industry.

As evidence of the implications of her prospective position, the Petitioner points to the letter from [REDACTED]. He contends that her work satisfies the need for “a petroleum engineer who can assist the industry to adapt and change its operations to ensure safe, efficient and fruitful oil and gas production in America’s deep oceans, maintaining high levels of safety assurance while drilling in the [REDACTED] and thus assisting us in becoming less dependent on foreign oil and gas.” While [REDACTED] indicates that the Petitioner’s work will assist the industry to adapt and change, the record does not show that the specific work she proposes to undertake offers original innovations that contribute to drilling safety advancements in the oil and gas industry, or otherwise has broader implications in the field of petroleum engineering. Furthermore, the record does not sufficiently corroborate the assertion that the Petitioner’s engineering work for [REDACTED] business unit stands to impact the nation’s overall dependence on foreign oil and gas. As the Petitioner has not established that her endeavor’s prospective impact supports a finding of national importance, she has not met the first prong of the *Dhanasar* framework.

#### B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner’s qualifications. Our RFE requested the Petitioner to submit documentation showing that she is well positioned to advance her proposed endeavor. In response, the Petitioner provides evidence of her work on various projects at [REDACTED] including oil field development reviews, reports on well planning and processes, updates to [REDACTED] handbook, a [REDACTED] at [REDACTED] audits, [REDACTED] reviews, and selection of mobile tablet devices for [REDACTED] rig-based operations. She also submits reference letters discussing her work at [REDACTED] and graduate research at [REDACTED]. As discussed below, we find that the Petitioner’s past experience as a petroleum engineer renders her well positioned to advance her proposed endeavor.

Several of the letters attest that the Petitioner has played a role in advancing drilling safety practices utilized by [REDACTED] and its business partners and contractors. For example, [REDACTED] states that the Petitioner developed the company’s “drilling planning and operation guideline[s] for [a] shallow reservoir [REDACTED] field,” and that she led a team which devised a [REDACTED] for non-operated joint venture drilling projects to ensure that other business partner operators minimize risks and have proper safeguards in place at their drilling sites. He also notes that she performed a “successful [REDACTED] audit project for [two] rig contractor companies, [REDACTED] and [REDACTED] who provide rigs, associated equipment, and personnel to [REDACTED].”

Multiple references from within [REDACTED] and outside the company also discuss the Petitioner’s support of [REDACTED] program, a drilling operations safety assurance process under which all of the company’s business units, wells, and rigs must be certified to certain well control standards.

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<sup>4</sup> While the record includes other letters that discuss the implications of the Petitioner’s work, they describe the potential impact of her previous roles, rather than that of the proposed endeavor identified in response to our RFE.

Specifically, [REDACTED] notes that the Petitioner served on a team of 20 individuals who helped simplify and enhance the program's effectiveness through development of [REDACTED] "external assessment protocol and [REDACTED] for non-operated joint venture operations" components. Another reference, [REDACTED] senior vice president of well control and blowout support at Add Energy, mentions his familiarity with the Petitioner's "work in [REDACTED] External Assessment Protocols" and claims that she "has been instrumental in supporting" the [REDACTED] program. The Petitioner also presents a letter from [REDACTED] presently the executive vice president of [REDACTED] who previously worked with her at [REDACTED] in a consulting capacity as director of North American operations at [REDACTED] asserts that the Petitioner "spearheaded the [REDACTED] program's implementation milestones" and that her team delivered "program goals ahead of schedule."

As an additional example of the Petitioner's achievements, [REDACTED] a contract [REDACTED] drilling engineer for [REDACTED] notes that he collaborated with her "on developing drilling, completion designs, and procedures for a [REDACTED] oil field offshore project in Africa." He indicates that the Petitioner devised a "probabilistic drilling and completion cost estimating" model that utilized past operational data to predict future performance. [REDACTED] further states that the Petitioner's "model is the standard operating procedure" for all projects within their business unit at [REDACTED]

In addition to her work for [REDACTED] the record includes documentation pertaining to the Petitioner's graduate research at [REDACTED] Her research advisor, [REDACTED] a professor in the department of engineering at [REDACTED] states: "In one of our studies on well stimulation technique optimization, . . . [the Petitioner] demonstrated her superior research ability and played a significant role in the study." [REDACTED] further indicates that the Petitioner "made a significant breakthrough toward understanding of the partial monolayer proppant fracturing technique" and provided "a better way to improve well stimulation technique to maximize oil and gas recovery."<sup>5</sup>

The evidence discussed above is sufficient to demonstrate that the Petitioner is well positioned to advance her proposed endeavor of improving the efficiency of drilling and completions and enhancing safety standards in [REDACTED] operations.<sup>6</sup> Accordingly, she has established that she satisfies the second prong of the *Dhanasar* framework.

<sup>5</sup> Although the Petitioner's graduate work involved her investigation of new fracturing techniques, we note that her proposed endeavor at [REDACTED] is not focused on conducting original research.

<sup>6</sup> While the Petitioner is well positioned to improve her [REDACTED] business unit's drilling and completions' efficiency and safety standards, the evidence is not sufficient to demonstrate that her past work has affected the petroleum engineering field beyond her company's operations and business partnerships, or that she has otherwise been integral to advancing safer drilling and completions innovations that have garnered significant interest in her industry. For instance, while several references focus on the Petitioner's involvement with [REDACTED] program, the letters do not establish that the Petitioner was among those primarily responsible for conceptualizing or devising the program. Furthermore, although the record includes articles about WellSafe in *Rigzone* (2014), *Offshore Engineer Digital* (2014), and *Drilling Contractor* (2013) which mention other engineers, the articles do not discuss the Petitioner or her specific innovative

### C. Balancing Factors to Determine Waiver's Benefit to the United States

The Petitioner asserts that it would be impractical for her to obtain a labor certification. She contends that "she possesses the special skill of mastery of cutting-end [*sic*] technology, the knowledge of safe drilling techniques on land and in deepwater both in the United States and abroad, and the ability of innovative thinking to solve technical and practical problems within drilling and completions projects, none of which can be articulated on an application for labor certification." In addition, the Petitioner notes that "the job requirements . . . must represent the employer's actual minimum requirements" and "cannot represent what the employer would prefer for the position." She further states that even if other U.S. workers with the same qualifications were available, the United States would still benefit from her contributions. Lastly, the Petitioner indicates that avoiding economic and environmental disasters such as the [REDACTED] incident is "sufficiently urgent to warrant foregoing the labor certification process."

We acknowledge the likelihood that some of the Petitioner's knowledge and experience exceeds the minimum requirements for her occupation and therefore could not be easily articulated on an application for labor certification.<sup>7</sup> The Petitioner, however, has not shown that she presents a significant benefit to the United States through her proposed endeavor or that her prospective work would serve an urgent national interest. While the Petitioner proposes to perform functions that improve safety and efficiency with respect to her company's drilling operations, these factors do not outweigh the benefits inherent in the labor certification process. With respect to the prevention of catastrophic events, the Petitioner has not demonstrated an urgent national interest in her own contributions to achieve this aim, nor has she shown that she offers safety innovations or other contributions that would benefit the nation even if other qualified U.S. workers were available. In sum, the evidence does not indicate that the Petitioner offers contributions of such value that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. The Petitioner therefore has not established that she meets the third prong of the *Dhanasar* framework.

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contributions to the [REDACTED] program. Therefore, had the Petitioner met the first prong by demonstrating that her proposed endeavor has broader implications in the oil and gas industry (such as influencing safety practices in the petroleum engineering field or developing innovative drilling and completions methods that affect the industry), the record does not show that her background and progress in those broader endeavors render her well positioned to advance them.

<sup>7</sup> The labor certification process is designed to certify that a foreign worker will not displace nor adversely affect the wages and working conditions of U.S. workers who are similarly employed. Job requirements must adhere to what is customarily required for the occupation in the United States and may not be tailored to the foreign worker's qualifications or unduly restrictive, unless adequately documented as arising from business necessity.

#### IV. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.

Cite as *Matter of J-D-*, ID# 100146 (AAO Mar. 29, 2017)